

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:92-CR-00114-BR

UNITED STATES OF AMERICA

v.

LEROY ANGLOSON STUART

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ORDER

This matter is before the court on defendant's *pro se* "motion in response to government's motion to denie(d) [sic] without prejudice petitioner's 60(b)(6) motion," (DE # 54), which the court construes as a motion for reconsideration of its 29 October 2012 order. In that order, the court construed defendant's Rule 60(b)(6) motion as a successive 28 U.S.C. § 2255 motion and denied it without prejudice. (DE # 53.) By way of the instant motion, defendant contends that the court was required to give him notice of its intent to recharacterize the motion as a second or successive motion. Because the motion was defendant's second § 2255 motion, rather than his *first*, the court is not required to give notice to defendant before construing it as successive. United States v. Brown, 132 F. App'x 430, 431 (4th Cir. 2005) ("[T]he district court was not required to give [the defendant] notice before construing his Rule 60(b) motion as a successive § 2255 motion, and dismissing for lack of jurisdiction."). Defendant's motion is DENIED.

This 29 April 2013.



W. Earl Britt
Senior U.S. District Judge